

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

FALLS CHURCH MEDICAL CENTER, LLC, *et al.*,

Plaintiffs,

v.

M. NORMAN OLIVER, *et al.*,

Defendants.

CASE NO: 3:18-CV-428-HEH

FINAL PRETRIAL ORDER

The parties, by counsel and pursuant to this Court's Order entered on August 1, 2018, ECF No. 21, and attached Pretrial Schedule A, ECF No. 27-1, submit this Proposed Final Pretrial Order for entry in this case, setting forth the following:

1. **Stipulated Facts:** The parties stipulate to certain undisputed facts, which are set forth in Appendix A.

2. **Legal and Evidentiary Stipulations:**

- a. The parties stipulate to the following points of law:
 - i. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331.
 - ii. This Court has personal jurisdiction over the Defendants.
 - iii. Venue is proper in this district and division.
- b. The parties stipulate to the admissibility of the following evidence, as reflected in the exhibit lists in Appendix C:
 - i. All of the challenged statutes and regulations.

- ii. The current and preceding versions of the Virginia Department of Health materials relating to abortion care.
- iii. The authenticity of all exhibits properly authenticated at depositions of all witnesses excepting third parties.
- iv. The curricula vitae of experts stipulated as qualified by the Parties.
- c. The parties agree to seal all exhibits designated Attorneys' Eyes Only or Confidential pursuant to the Stipulated Protective Order, ECF No. 65.

3. **List of Proposed Witnesses:** Appendix B sets forth the witnesses who may be called to testify on behalf of each party, and whether each witness will testify as a fact or expert witness. Tab 1 of Appendix B sets forth Plaintiffs' witnesses. Tab 2 of Appendix B sets forth Defendants' witnesses.

4. **List and Description of All Exhibits:** Appendix C sets forth a list and description of all exhibits intended to be offered by each party and whether or not there are stipulations to admissibility. Tab 1 of Appendix C sets forth Plaintiffs' exhibits. Table 2 of Appendix C sets forth Defendants' exhibits.


5. **Issues in Dispute:** The parties agree that the triable issues are as follows:
- a. Whether Virginia's Licensing Statute imposes an undue burden on the right to abortion in violation of the Fourteenth Amendment.
 - b. Whether Virginia's First Trimester Abortion Facility Licensing Regulations (12 VAC 5-412 *et seq.*) promulgated pursuant to the Licensing Statute imposes an undue burden on the right to abortion in violation of the Fourteenth Amendment.

- c. Whether the facility inspections conducted pursuant to 12 VAC 5-412-90 and -100 violate the Fourth Amendment.
- d. Whether Virginia's second-trimester Hospital Requirement imposes an undue burden on the right to abortion in violation of the Fourteenth Amendment.
- e. Whether Virginia's "informed consent" requirements—including the mandatory ultrasound, the twenty-four hour delay, and the mandatory disclosures—impose an undue burden on the right to abortion in violation of the Fourteenth Amendment.
- f. Whether Virginia's criminal penalties for violations of the substantive restrictions listed above impose an undue burden on the right to abortion in violation of the Fourteenth Amendment.
- g. Whether Plaintiffs are entitled to a judgment declaring the challenged provisions unconstitutional for the reasons listed above.
- h. Whether Plaintiffs are entitled to a permanent injunction barring enforcement of the challenged provisions.
- i. Whether Plaintiffs are entitled to reasonable attorney's fees and costs.
- j. To the extent any factual issues are more properly characterized as legal issues, the parties hereby incorporate them herein.

6. Additional Issue: In addition to the stipulated issues that are in dispute, as listed in paragraph 5, the Court, pursuant to its order issued on May 6, 2019, directs that the parties be prepared to address at trial the level of oversight from a licensed physician that Advanced Practice Clinicians must have in order to provide first trimester abortion care.

It is so ORDERED.

Date: May 13, 2019
Richmond, VA

 /s/
Henry E. Hudson
Senior United States District Judge